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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,755	11/21/2003	Andrea Demetrius Bowens-Jones	9447	3138

27752 7590 09/25/2006

THE PROCTER & GAMBLE COMPANY  
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EXAMINER

CLAYTOR, DEIRDRE RENEE

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/719,755

**Applicant(s)**

BOWENS-JONES ET AL.

**Examiner**

Renee Claytor

**Art Unit**

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/21/04, 5/20/05</u> | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicant's election of Group I is hereby acknowledged. The election was made without traverse. Claims 1-16 are being examined on their merits herein and claims 17-20 are withdrawn from consideration as they don't read on the elected group. The election requirement is deemed proper and made **FINAL**.

### **Claim Rejections – 35 USC § 112**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 8 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear if the weight of the composition is referring to percentage weight or mass weight. In addition, the phrase "at least about 1" renders the claim indefinite. One of ordinary skill in the art would not be able to reasonably interpret what constitutes "at least about 1".

### **Claim Rejections – 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8-13, 15-16 rejected under 35 U.S.C. 103(a) as being unpatentable over Schraer et al. (U.S. Patent 6,274,127 B1) in view of Swaile (U.S. Patent 6,149,897).

Schraer et al. teach an anhydrous antiperspirant composition comprised of water-reactive monomers (Col. 2, lines 46-49). The composition contains an anhydrous carrier, such as a cyclic silicone, in a concentration from about 1% to 99% (meeting the limitation of claims 1, 2, and 13; Col. 4, lines 49-54; Col. 5, lines 17-24 and 40-43). The antiperspirant composition also contains deodorant actives which are antimicrobial agents (meeting the limitations of claims 15-16, Col. 6, lines 63-66). Antiperspirant actives in the composition include aluminum and zirconium salts in a concentration from about 0.1% to 30% (meeting the limitation of claims 1, 2, and 11; Col. 8, lines 19-22, lines 29-38). The composition also contains thickening agents such as organic solids, silicone solids, and gallants, in a concentration from about 0.1% to about 35% (meeting the limitation of claims 1, 2, and 12; Col. 9, lines 22-27). The composition also contains skin-adhering polymers such as copolymers of acrylates and silicone copolyols and silicone elastomers (meeting the limitation of claims 1, 3-5; Col. 9, lines 41-45, Table 1). The ratio of the polymer is proportional to the weight of the thickening agent as shown in Table 1 (weights shown as percentages of the total composition; meeting the limitation of claim 8).

Schraer et al. does not teach a volatile solvent, the concentration of the skin-adhering polymers, the glass transition temperature of the skin-adhering polymer, or the film-formation at or above the entanglement molecular weight of the polymer.

Swaile teaches an anhydrous antiperspirant compositions where a possible anhydrous solvent is ethanol (further meeting the limitation of claims 1, 9 and 10; Col. 4, lines 57-63 and Claim 5).

Furthermore, it is obvious to vary and/or optimize the concentration of the skin-adhering polymers, the volatile solvent, and the glass transition temperature of the skin-adhering polymer provided in the composition, according to the guidance provided by Schraer et al., to provide a composition having the desired properties such as the desired concentration of the skin-adhering polymers and volatile solvent and the desired glass transition temperature of the skin-adhering polymer to effectively adhere to the skin. It is noted that "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Furthermore it is obvious that the skin-adhering polymer will have the same properties, such as film-formation at or above the entanglement molecular weight of the polymer used. Because the skin-adhering polymer of the prior art and the skin-adhering polymer of the instant application are the same, they will share the same physical properties.

Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the teachings of Schraer et al. which teaches an anhydrous antiperspirant composition comprised of a skin-adhering polymer, an anti-perspirant active, a thickening agent, and an anhydrous carrier with the teachings of Swaile which also teach an anhydrous antiperspirant composition with

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ethanol as a volatile solvent. One having ordinary skill in the art at the time the invention was made would have been motivated to combine the ingredients of Schraer et al. and add ethanol from the teachings of Swaile to provide improved dry feel application, antiperspirant efficacy and stability of the dissolved active.

***Contact Information***

No claims are allowed.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Renee Claytor whose telephone number is 571-272-8394. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Renee Claytor

  
JOHANN RICHTER  
SUPERVISORY PATENT EXAMINER  
GROUP 16